agreement and pointing out that they have failed to take steps to have the land transferred. He threatened legal proceedings if the land was not transferred within seven days. The respondents also through their solicitors replied on March 16, 1970 saying that they were unable to comply with the appellant's request and that they were not taking any steps to effect the transfer. They also challenged the validity of the agreement. A month later on April 16, 1970, the appellant issued the writ in this action claiming specific performance or alternatively, for damages for breach of contract. In their statement of defence which was later amended the respondents raised the defence of fraud and limitation. They failed on fraud but succeeded on limitation.

On the defence of limitation the question which arose was whether the period of 12 years ran from the date of the agreement, *i.e.* April 12, 1958, as contended by the respondents, or, as contended by the appellant, from the date when the respondents threatened to infringe his right by saying in their letter of March 16, 1970 that they refused to take any steps to effect the transfer of the land. Section 9(1) of the Limitation Ordinance, 1953 which governs this question is in these terms:

"9. (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person."

In the Privy Council case of *Bolo* v. *Kokland & Ors*[1] it was stated:

"There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted."

This particular passage has influenced the decision of the Federal Court in *Ng Moh* v. *Tan Bok Kim & Anor*[2] which was later followed in *Nasri* v. *Mesah*.[3] On these authorities the appellant's contention would seem to be correct. But the learned judge held otherwise. He distinguished those cases on the ground that the appellant in the instant case was not in possession of the land. Apparently he was of the view that possession or no possession was relevant to the consideration of the issue before him. The case of *Halijah* v. *Morad & Ors.*,[4] also a Federal Court decision, was referred to as though it was an exception to the rule established in *Bolo* v. *Kokland & Ors., supra,* and followed in *Ng Moh* v. *Tan Bok Kim & Anor., supra,* and *Nasri* v. *Mesah, supra.* We must say at once it was not such an exception. In *Halijah* v. *Morad & Ors., supra,* four beneficiaries of an estate sued Halijah to recover possession of a piece of land in Kedah. Halijah counter-claimed for the transfer of the land or for specific performance of a contract admittedly signed by the beneficiaries and their deceased mother to whom the land belonged. In dealing with *Halijah's* counter-claim the trial court held on the fact that the contract was void as against two of the beneficiaries because at the time of the agreement they were minors or infants. So the counter-claim against them failed. As regards the other two beneficiaries, they raised the statutory defence of limitation under the Kedah Enactment which was applicable. Being out of time by about 8 years the trial court held the counter-claim statute barred. No question arose as to the date from which the period of limitation was to run. Halijah appealed to the Federal Court and there too the said question did not arise for consideration. But her counsel found it necessary to rely on the judgment of Lord Denning in *Williams* v. *Greatex*.[5] In that case the purchaser of land who was in possession brought an action for specific performance after having waited for 10 years. The vendor resisted the claim on the ground that "there had been too much delay to enable the purchaser to obtain specific performance." Lord Denning in his judgment said that 10 years is a long time to wait before bringing an action for specific performance. But then on the facts before him he held that the purchaser had more than an equity. He had an equitable interest in the land and that so long as he was in possession he did not lose his rights simply by not proceeding at once for specific performance. Lord Denning was undoubtedly considering whether the equitable maxim, delay defeats equity, should operate against the purchaser. He was not concerned with the statutory defence of limitation. In the judgment of the Federal Court in *Halijah* v. *Morad & Ors., supra,* it was pointed out that inasmuch as Halijah was in possession not as a purchaser but as a creditor, the principle stated by Lord Denning did not apply. That was in answer to the counsel's reliance on the said principle. Nothing which was said can, however, be taken as suggesting that possession or no possession is a factor for determining the date from which the period of limitation is to run. *Halijah* v. *Morad & Ors., supra,* therefore, is not an authority for such a proposition.

These were our reasons for allowing this appeal.

Appeal allowed.

Solicitors: *Lee & Co.; Datuk Bijaya & Co.*

LEE CHUAN TUAN v. COMMISSIONER OF LANDS AND MINES, JOHOR BAHRU

[O.C.J. (Syed Othman J.) August 28, 1973]
[Johor Bahru — Originating Summons No. 81 of 1972]

Land Law — Whether lessee of land a registered proprietor — Whether lease gives power to lessee to apply to Commissioner of Lands and Mines for subdivision of the land — National Land Code, ss. 5, 135, 136, 221 and 227.

In this case the registered proprietors had leased a piece of land to the applicant for 75 years. Under the terms of the lease the lessee was to develop the land by building houses on it and for that purpose he was to be at liberty to subdivide the land. The applicant applied to the Land Office for subdivision of the land. This application was refused. The Originating Summons in this case raised the following questions—

(1) Whether a lessee in the circumstances of this case is a registered proprietor within the meaning of the National Land Code;

(2) If he is not, whether the lease gives power to the lessee to apply to the Commissioner of Lands and Mines for subdivision of the leased land.

Held: (1) the lessee is not the registered proprietor within the meaning of the National Land Code;

(2) the lease did not give the lessee the power which enables the Commissioner of Lands and Mines as the approv-

ing authority to approve his application for subdivision of the leased land.

Cases referred to:-

(1) *Great Northern Railway* v. *Eastern Countries Railway* (1851) 9 Hare 306, 311.

(2) *Gardner* v. *London, Chatham and Dover Railway Co.* (1866-7) L.R. 2 Ch. App. 201, at p. 212.

(3) *Re Salisbury Railway and Market House Company* [1967] 1 All E.R. 813.

ORIGINATING SUMMONS.

M. S. Miranda for the applicant.

Haji Mohamed Eusoff bin Chin (State Legal Adviser) for the respondent.

Syed Othman J.: The questions to be determined in this application are:

(1) whether a lessee in the circumstances of this case is a registered proprietor within the meaning of the National Land Code;

(2) if he is not, whether the lease gives power to the lessee to apply to the Commissioner of Lands and Mines for sub-division of the leased land.

These are the circumstances leading to these questions being brought before the court. The land in question is in the Township of Kluang. It measures 29 acres 3 roods 10 poles. The registered proprietors (six persons) gave a lease to the applicant (whom I shall refer to as the lessee) for 75 years commencing on 15th November, 1970. The lease was registered in the land office at Kluang on 31st July, 1971. By the lease, the lessee is to develop the land by erecting terrace houses, semi-detached houses and shop houses into what is to be known as the "Bukit Kornia Housing Estate". The part of the lease material to this application is clause 13, which reads:

"That the lessee shall be at liberty to sub-divide the said land into housing lots but shall furnish a copy of the layout plan for the perusal of the lessors but the approval of the lessors shall not be necessary and for this purpose the lessors empower the lessee to exercise his discretion absolutely and freely without the interference of the lessors."

The lessee then applied to the Collector of Land Revenue, Kluang for sub-division of the land. The collector on 19th January, 1972 informed him by letter that the application could not be considered and that the proprietors themselves should have made the application. On 12th June, 1972 the Director of Lands and Mines, Johor gave the same reply to a letter from the solicitors of the lessee. The director is the Commissioner of Lands and Mines for the purpose of the Code.

Question (1):

"Proprietor" is defined in section 5 of the National Land Code (the Code) to mean "any person or body for the time being registered as the proprietor of any alienated land."

On behalf of the lessee it is argued in effect that that in interpreting this definition the court here should seek recourse to the definitions in Australian laws as the Code is founded on the Torrens system. In regard the definitions in Australian laws reference is made to *Francis'* "Torrens Title in Australasia" Vol. 1 at pages 49 and 50.

"The word 'proprietor' is defined by all of the enactments other than the W.A.* Act with, for the present purpose, insignificant difference, as meaning any person seized or possessed of any estate or interest in land, at law or in equity, in possession of expectancy. The definition of 'proprietor' under section 4(1) of W.A.* Act is in very different terms. Under that Act the term means 'the owner whether in possession, remainder reversion or otherwise of land or of a lease mortgage or charge whose name appears or is entered as the proprietor thereof in the register book; and such word also includes the donee of a power to appoint or dispose of the same'."

I agree with the submission of the State Legal Adviser. The definitions in the Australian laws, indeed any Australian law, have no force in this country. Even the Australian enactments themselves define "proprietor" differently. *Francis* himself continuing with the above passage says:

"It seems, therefore, that in Western Australia the word is restricted so that it can apply only to a person whose estate or interest in land already appears in the register book, and cannot mean, for example, a person seized of an estate in fee in land under the general law, who makes an application to have that land brought under the Act, unless the context in which the word appears or the other provisions of the Act require a different construction. However, under W.A. section 180 the requirement for the production of documents or the giving of explanations does not extend to the first class of persons mentioned above, but is limited to the second."

I do not think the courts of West Australia would apply the definitions in the other States of Australia if they want to overcome the restrictive effect of the definition in the West Australian enactment. The courts here have no authority to apply the laws of other countries unless Parliament so enacts. In respect of land in this country Parliament has enacted the Code. The courts here must therefore construe any provision of the Code on its own construction and in the context of the Code.

It is further argued that section 227(1) of the Code clearly envisages that a lease created by virtue of section 221 vests upon the lessee the right and interest of proprietorship. Section 221 relates to the power of the proprietor to grant lease of alienated land for a term exceeding three years. Section 227 reads:

"(1) The interest of any lessee, sub-lessee or tenant shall, whether or not it takes effect in possession, vest in him on the registration of the lease or sub-lease or, as the case may be, the grant of the tenancy.

(2) The said interest shall include the benefit of all registered interests then enjoyed with the land to which it relates."

The intent of these provisions should be clear and should require no explanation. What is to be vested by sub-section (1) is the interest in the lessee. Sub-section (2) widens the vesting to all registered interests then enjoyed with the land. The "registered interests" here can only refer to those interests which are registered in accordance with the Code or any previous land law. See the definition of "registered" in section 5. The expression does not therefore mean powers of the proprietor conferred by law.

My answer to this question is that the lessee is not the registered proprietor within the meaning of the Code.

Question (2):

Section 135 of the Code reads:

* West Australia.

"(1) The proprietor of any alienated land held under Registry or Land Office title may, with the approval under this Chapter of the State Commissioner or Collector, as provided by sub-section (2), sub-divide the land into two or more portions (in this Chapter referred to as 'sub-divisional portions') to be held by him under separate titles.

(2) In the absence of any direction to the contrary by the State Authority, the approval required by sub-section (1) shall be given —

(a) by the State Commissioner in the case of land held under Registry title, and

(b) by the Collector in the case of land held under Land Office title."

I shall refer to the State Commissioner or the collector as the approving authority.

Considering the case as a whole, particularly clause 13 of the lease, and the arguments before me, the question should have been paraphrased thus: Whether the lessee who is empowered by a term of the lease to sub-divide the land has the power of a proprietor for the purpose of sub-division under section 135 of the Code.

On behalf of the plaintiff it is argued that if Parliament had intended that only the proprietor should make the application for sub-division, then the provision in section 135(1) of the Code should have read: "... only the proprietor shall ..." and not, as now appearing, "the proprietor ... may ..." sub-divide the land. It is also argued that by clause 13 of the lease the proprietor has delegated the power of sub-division to the lessee. I do not think I should discuss the several authorities on interpretation and construction which have been cited as they do not relate to the enabling provision.

I must confess it has never occurred to me that the enabling provision of the section can be understood in the way that has been suggested. I should have thought that it should be plain that when Parliament enacts that a particular person may do a thing it means that only that person may do the thing and no one else and that the word "may" in the ordinary usage and in the context of section 135(1) is permissive in the sense that it gives a personal discretion to the proprietor; it is a matter for him whether or not he wishes to sub-divide the land. By no stretch of imagination the word "may" may be construed as permissive in the sense that if the proprietor does not apply for sub-division then other persons may do so.

I come now to consider whether the proprietors in the case here can validly delegate the power conferred by section 135(1) to the lessee. This is a statutory power. Both parties concede that normally statutory powers conferred on the proprietor under the Code may be transferred by an effective and proper power of attorney and that the lease is not a power of attorney. The Code itself provides for registration of a power of attorney in respect of land. See Chapter 5 Part 18 of the Code. I should have thought that if the proprietors had intended that the lessee should have the full power of sub-division they would have been advised to execute a power of attorney immediately after executing the lease, considering that they agreed to their land being developed into a housing estate. Counsel for the lessee, however, informed me that after granting the lease some of the proprietors could not be traced, and so no power of attorney could be executed. I find this somewhat strange. But I shall leave it at that.

Coming back to the matter in point, I think it is a settled principle of law that there can be no delegation, transfer or assignment of a statutory power unless the law permits it either expressly or impliedly. In *Great Northern Railway* v. *Eastern Counties Railway*,[1] Turner V.-C. refused to enforce an agreement which had been made by the two companies, on the ground that it was void as being "an entire delegation of all the powers conferred by Parliament on the defendants," and "an attempt to carry into effect without the intervention of Parliament what cannot lawfully be done except by Parliament. ..."

In *Gardner* v. *London Chatham & Dover Railway Co.*,[2] Cairns L.J. said:

"When Parliament, acting for the public interest authorises the construction and maintenance of a railway, both as a highway for the public, and as a road on which the company may themselves become carriers of passengers and goods, it confers powers and imposes duties and responsibilities of the largest and most important kind, and it confers and imposes them upon the company which Parliament has before it, and upon no other body of persons. These powers must be executed and those duties discharged by the company. They cannot be delegated or transferred."

This dictum was applied in *Re Salisbury Railway & Market House Company*.[3]

Although the cases cited relate to companies, I am of the view that the principles apply to any officer or particular person to whom Parliament has conferred personal discretionary power. The Code has provided specific methods whereby a proprietor may delegate, transfer or assign his powers *i.e.* by transfer of the land or, as indicated earlier, by a power of attorney. In the context of the present case, a transfer of land must be distinguished from a lease. By a transfer the proprietor parts with the whole while by a lease the proprietor, in exercise of the power conferred by section 221 of the Code merely consents to the lessee occupy the land for a certain time. A right of occupation for a limited time in these circumstances does not carry with it the power conferred on the proprietor by law. It should be observed further that when a proprietor applies for sub-division of land, particularly for the purpose of turning it to a housing estate, the approving authority will invariably require him to surrender portions of that land for road access to the various sub-divided lots. See section 136. A lessee does not have the power to surrender land. The power is only given to the proprietor. See section 195. Any surrender of land by the lessee would therefore be invalid. Considering all this, I would say that if the lease purports to delegate, transfer or assign the statutory discretionary power conferred by section 135(1) it is void to that extent.

The answer to question (2) is therefore that the lease does not give the lessee the power of sub-division of land.

Order accordingly.

Solicitors: *Miranda & Co.*